

| Issue No. | Statement of Issue | Petitioners' Proposed Contract Language | Petitioners' Rationale | Verizon's Proposed Contract Language | Verizon Rationale |
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| | operations? | | | | |
| IV-104 | Should the Interconnection Agreement contain a provision obligating both parties in their performance of their obligations under the Interconnection Agreement to cooperate fully and act in good faith and consistently with the intent of the Act, and prohibiting either Party from unreasonably delaying, withholding, or conditioning any action it is required or permitted to take pursuant to the Interconnection Agreement? | Resolved by inclusion of WorldCom's Part A, Section 16.1. | | | Resolved. |
| IV-105 | Should the Interconnection Agreement contain a provision stating that the Act and Virginia law govern the validity, construction, enforcement, and interpretation of the Interconnection Agreement, without regard to Virginia's conflict of laws rules? | Resolved by inclusion of WorldCom's Part A, Section 17.1. | | | Resolved. |
| IV-106 | Should the Interconnection Agreement contain a provision under which each Party agrees to indemnify the other Party for certain specified liability arising from the Interconnection Agreement that is legally caused by the indemnifying Party? Should the provision also contain various procedures, including limiting conditions, regarding how indemnification is obtained, including notice, authority to defend, authority to settle, obligation to assert defenses in applicable Tariffs, and an obligation on the indemnified Party to | <p>Part A, Sections 19.1, 19.2, 19.3, 19.3.1-19.3.5:</p> <p>Section 19. Indemnification</p> <p>19.1 Each Party agrees to release, indemnify, defend and hold harmless the other Party from and against all losses, claims, demands, damages, expenses, suits or other actions, or any liability whatsoever, including, but not limited to, costs, and reasonable attorneys' fees and allocated in-house legal expenses (collectively, a "Loss") incurred by</p> | <p>These provisions provide a clear legal framework for resolving liability between the parties arising from third party claims. As a general principle, it is both equitable and efficient that each party should be responsible for the damages that party causes.</p> <p>WorldCom is not proposing that Verizon be the guarantor of WorldCom's liabilities. Rather, pursuant to reasonable business principles, it proposes only that Verizon be responsible for any liabilities that arise from Verizon's</p> | <p>Verizon has proposed to WorldCom § 24 of Agreement proposed to AT&T</p> <p>24.0 INDEMNIFICATION</p> <p>24.1 Each Party ("Indemnifying Party") shall indemnify, defend and hold harmless the other Party ("Indemnified Party") from and against any and all Losses that arise out of bodily injury to or death of any person, or damage to, or destruction or loss of, tangible real and/or personal property of any person, to the extent such injury, death, damage,</p> | <p>If WorldCom's proposed language for § 19 were to be used, subsection 19.1(b) must be reinstated and § 19.2 must be deleted. As an alternative, Verizon is willing to adopt, in its interconnection agreement with WorldCom, the indemnification provisions agreed to by Verizon and AT&T (quoted at left).</p> <p>By insisting upon inclusion of Section 19.2 of its proposed language, WorldCom again unreasonably hopes to place all of the risk of doing business on Verizon VA – effectively making</p> |

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| | offer reasonable cooperation and assistance? | <p>the indemnified Party to the extent that such Loss is: suffered, made, instituted, or asserted by any other person, relating to personal injury to or death of any person, or for loss, damage to, or destruction of real and/or personal property, whether or not owned by others, incurred during the term of this Agreement and to the extent legally caused by the acts or omissions of the indemnifying Party, regardless of the form of action. Notwithstanding the foregoing indemnification, nothing in this Section [19] shall affect or limit any claims, remedies, or other actions the indemnifying Party may have against the indemnified Party under this Agreement, any other contract, or any applicable Tariff(s), regulations or laws.</p> <p>19.2 Each Party agrees to release, indemnify, defend and hold harmless the other Party from and against all Loss incurred by the indemnified Party suffered, made, instituted, or asserted by any other person (regardless of the form of action) and to the extent such Loss is legally caused by the indemnifying Party through acts or omissions in breach of this Agreement. Notwithstanding the foregoing indemnification, nothing in this Section [19] shall affect or limit any claims, remedies, or other actions the indemnifying Party may have against the indemnified Party under</p> | <p>own actions or breaches in the same way that WorldCom will be responsible for the injuries and damage caused by its own actions or breach.</p> <p>Verizon's insistence on the deletion of Section 19.2 and inclusion of Section 19.1(b) would result in liability being apportioned based <u>solely</u> on whose customer raises the third-party claim, and not on which party was the cause of the harm. This is particularly problematic because, at the present time, Verizon is typically the supplier of the relevant services.</p> <p>Thus, under Verizon's proposal, it could repeatedly breach its contract with WorldCom, or even intentionally act in a way that harms WorldCom's customers, without being held responsible for such behavior. Under Verizon's proposal, any claim raised by WorldCom's customers for such actions by Verizon would have to be absorbed by WorldCom. Not only is this flatly inconsistent with the general principle of law that every party bears responsibility for their own actions, it creates perverse incentives. As this Commission has recognized, Verizon, as the incumbent, has the incentive to behave in ways that make it more difficult for new entrants to attract and keep customers. (See Rebuttal Testimony of John Trofimuk, Matt</p> | <p>destruction or loss, was proximately caused by the negligent or otherwise tortious acts or omissions in connection with this Agreement of the Indemnifying Party, or the directors, officers, employees, agents, or contractors (excluding the Indemnified Party), of the Indemnifying Party.</p> <p>24.2 Nothing in Section 24.0 shall affect or limit any claims, remedies, or other actions the Indemnifying Party may have against the Indemnified Party under this Agreement, any other contract, any applicable Tariff(s), or Applicable Law, relating to the Indemnified Party's provision of services, facilities or arrangements to the Indemnifying Party under this Agreement.</p> <p>24.3 An Indemnifying Party's obligation to indemnify, defend and hold harmless the Indemnified Party as provided in this Section 24.0 shall be conditioned upon the following:</p> <p>a) The Indemnified Party shall promptly notify the Indemnifying Party of any action taken against the Indemnified Party relating to the Indemnifying Party's obligations under this Section 24.0. However, the failure to give such notice shall release the Indemnifying Party from its obligations under this Section 24.0 only to the extent the failure to give such notice has prejudiced the Indemnifying Party.</p> <p>b) The Indemnifying Party shall</p> | <p>Verizon VA either provide perfect service (which is not possible) or indemnify WorldCom for any claims WorldCom's end user customers bring against WorldCom on account of less than perfect service provided by Verizon VA.</p> <p><u>See</u> Direct Testimony of General Terms and Conditions Panel, dated August 17, 2001, at pp. 26-27; and Rebuttal Testimony of General Terms and Conditions Panel, dated September 5, 2001, at pp. 15-21.</p> |

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| | | <p>this Agreement, any other contract, or any applicable Tariff(s), regulations or laws.</p> <p>19.3 The indemnification provided herein shall be conditioned upon:</p> <p>19.3.1 The indemnified Party shall promptly notify the indemnifying Party of any action taken against the indemnified Party relating to the indemnification, provided that failure to notify the indemnifying Party shall not relieve it of any liability it might otherwise have under this Section [19] to the extent it was not materially prejudiced by such failure of notification.</p> <p>19.3.2 The indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the indemnified Party may engage separate legal counsel only at its sole cost and expense. In the event the indemnifying Party does not accept the defense of any such action, the indemnified Party shall have the right to employ counsel for its own defense at the expense of the indemnifying Party.</p> <p>19.3.3 In no event shall the indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the indemnified Party, which consent shall not be</p> | <p>Harthun and Lisa Roscoe, dated September 5, 2001 at 14-16).</p> | <p>have sole authority to defend any such action, including the selection of legal counsel, and the Indemnified Party may engage separate legal counsel only at the Indemnified Party's sole cost and expense.</p> <p>c) In no event shall the Indemnifying Party settle or consent to any judgment in an action without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld. However, in the event the settlement or judgment requires a contribution from or affects the rights of the Indemnified Party, the Indemnified Party shall have the right to refuse such settlement or judgment and, at its own cost and expense, take over the defense against such Loss, provided that in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the Indemnified Party against, the Loss for any amount in excess of such refused settlement or judgment.</p> <p>d) The Indemnified Party shall, in all cases, assert any and all provisions in its Tariffs that limit liability to third parties as a bar to any recovery by the third party claimant in excess of such limitation of liability.</p> <p>e) The Indemnified Party shall offer the Indemnifying Party all reasonable cooperation and assistance in the defense of any such action.</p> <p>24.4 Each Party agrees that it will not implead or bring any action</p> | |

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| | | <p>unreasonably withheld.</p> <p>19.3.4 In any action for which indemnity is sought, the indemnified Party shall assert any and all provisions in applicable Tariffs that limit liability to third parties as a bar to any recovery by the third party claimant in excess of applicable limitations of liability.</p> <p>19.3.5 The indemnified Party shall offer the indemnifying Party all reasonable cooperation and assistance in the defense of any such action.</p> | | <p>against the other Party or its affiliates, or any of their respective directors, officers, agents or employees, based on any claim by any person for personal injury or death that occurs in the course or scope of employment of such person by the other Party and that arises out of performance of this Agreement.</p> <p>24.5 In addition to its other obligations under this Section 24.0, each Party shall, to the extent allowed by Applicable Law, provide in its Tariffs and contracts with its Customers, that, except for gross negligence or willful misconduct, in no case shall such Party or any of its agents, contractors or others retained by such Party be liable to any Customer or third party for (i) any loss relating to or arising out of the services, facilities or arrangements obtained or provided under this Agreement, whether in contract or tort, that exceeds the amount such Party would have charged the applicable Customer for the service(s) or function(s) that gave rise to such loss, and (ii) Consequential Damages.</p> <p>24.6 Notwithstanding any other provision of this Agreement, with respect to Verizon's provision of Line Sharing to AT&T hereunder, each Party shall release, indemnify, defend and hold harmless the other Party for any Loss suffered, made, instituted, or asserted by the other Party's Customer(s) that arise from</p> | |

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| | | | | disruptions to that Customer's service or from any violation of Applicable Law governing the privacy of the Customer's communications, and that are proximately caused by the grossly negligent or willful acts or omissions of the Indemnifying Party in connection with a Line Sharing arrangement. | |
| IV-107 | Should the Interconnection Agreement contain a provision regarding intellectual property rights stating that (1) any intellectual property originating from or developed by a Party remains in the exclusive ownership of that Party; and (2) the Interconnection Agreement does not grant either Party any form of license in the other Party's intellectual property (with the exception of certain limited use licenses)? | <p>Part A, Section 20.1</p> <p>Section 20. Intellectual Property Rights</p> <p>20.1 Any intellectual property which originates from or is developed by a Party shall remain in the exclusive ownership of that Party. Except for a limited license to use a Party's patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right now or hereafter owned, controlled or licensable by a Party, is granted to the other Party or shall be implied or arise by estoppel.</p> | <p>This provision is necessary because it makes clear that the Interconnection Agreement does not itself create or modify the Parties' intellectual property rights, and obligates each Party to take steps with respect to the intellectual property rights of third parties that are necessary to give full effect to its obligations under the Interconnection Agreement. More specifically, the provision would give WorldCom an implied limited right to use any of the intellectual property owned by Verizon that is embedded in Verizon's network, and vice versa. The license to use such intellectual property extends no further.</p> <p>Verizon's only articulated objection to this provision relates to § 20.2 and the scope of Verizon's "best efforts" obligation to negotiate rights for WorldCom to use Verizon's network under the same licensing terms that Verizon receives from its vendors. That issue falls more properly under Issue III-15, which speaks to the right to use third party intellectual property, and is fully addressed in the testimony</p> | | <u>See Issue III-15.</u> |

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| | | | <p>preceding this issue.</p> <p>Although Verizon does not address this directly, its proposed Section 28.16 states that there must be "a separate license agreement between the Parties granting such rights" (28.16.1). This appears to suggest that, before accessing any part of Verizon's network pursuant to the interconnection agreement, WorldCom must separately negotiate a license agreement with Verizon in order to use any intellectual property belonging to Verizon that is embedded in that portion of Verizon's network WorldCom is using. It is completely contrary to our experience that in an agreement of this type the granting of rights of use as between the parties of intellectual property necessary or appropriate to the very carrying out of the transaction would be left to a separate negotiation or separate document. It would also be inconsistent with the Act's mandate that access to a network element include access to all features and functions of that element. (See Direct Testimony of Robert Peterson and Matt Harthun, at 14-17).</p> | | |
| IV-108 | Should the Interconnection Agreement contain a provision that prohibits either Party from publishing or using, absent agreement, the other Party's logo, trademark, or service mark in any product, service, advertisement, promotion, or any | Resolved by inclusion of WorldCom's Part A, Section 20.3. | | | Resolved. |

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| | other publicity matter? | | | | |
| IV-109 | Should the Interconnection Agreement contain a provision stating that the Interconnection Agreement is the joint work product of the representatives of the Parties, that it has been drafted in final form by one of them for convenience, and that no inferences designed to resolve ambiguity shall be drawn against either Party solely on the basis of authorship? | Resolved by inclusion of WorldCom's Part A, Section 21.1 | | | Resolved. |
| IV-110 | Should the Interconnection Agreement contain a provision that prohibits a providing Party from requiring the purchasing Party to produce a letter of authorization, disconnect order, or other writing, from the purchasing Party's subscriber as a pre-condition to processing an Order from the purchasing Party? | <p>Part A, Section 22.1:</p> <p>Section 22. Migration of Service</p> <p>22.1 A Providing Party shall not require the Purchasing Party to produce a letter of authorization, disconnect order, or other writing, from the Purchasing Party's subscriber as a pre-condition to processing an Order from the Purchasing Party.</p> | <p>WorldCom has proposed that the interconnection agreement contain a provision preventing Verizon from requiring WorldCom to obtain written customer authorization prior to processing an order from WorldCom.</p> <p>Requiring written proof of authorization is unnecessary and only serves to delay the provision of services to WorldCom's customers. WorldCom currently obtains electronic authorization to process orders; specifically, WorldCom obtains verification of the customer's consent from an independent third-party.</p> <p>WorldCom has proposed the inclusion of this provision as a means of ensuring that it may continue to use this type of authorization consistent with applicable law. WorldCom proposes the inclusion of this provision to ensure that Verizon does</p> | <p>Verizon has proposed to WorldCom § 18.1 – 18.3 of the Agreement proposed to AT&T</p> <p>18.1 Intercept and Referral Announcements</p> <p>When a Customer changes its service provider from Verizon to AT&T, or from AT&T to Verizon, and does not retain its original telephone number, the Party formerly providing service to such Customer shall provide a referral announcement ("Referral Announcement") on the abandoned telephone number which provides details on the Customer's new number or provide other appropriate information to the extent known. When a Customer changes its local service provider from AT&T to Verizon or from AT&T to a CLEC, where AT&T was providing service to the Customer through unbundled Local Switching, and the Customer does not retain its original telephone</p> | <p>Verizon cannot agree to inclusion of WorldCom's proposed Part A, § 22.1. Although Verizon will comply with applicable law, it cannot be forced to obligate itself through the interconnection agreement beyond the requirements of applicable law. Verizon proposes for inclusion in the Verizon-WorldCom interconnection agreement the Coordinated Service Arrangements language agreed to by Verizon and AT&T.</p> <p><u>See Direct Testimony of General Terms and Conditions Panel</u>, dated August 17, 2001, at p. 29.</p> |

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| | | | <p>not insist upon receiving a copy of a letter of authorization or other writing as a pre-condition to processing orders.</p> <p>This provision accomplishes two closely related goals. It prevents Verizon from insisting on a written authorization in situations in which the law permits another type of proof of consent, for example, oral authorization verified by a third-party. In addition, it prevents Verizon from policing WorldCom's compliance with applicable law; that is, WorldCom's proposed language prevents Verizon from demanding written proof of the customer's consent in advance of processing the order, even though WorldCom has informed Verizon that it has obtained that consent in whichever form the law authorizes. The law authorizes several forms of consent. To the extent that the law changes to require a written authorization in this context, WorldCom will, of course, comply with that law, and the contract can be amended to reflect that. This Commission has recognized that oral consent, verified by a neutral third-party, is an acceptable means of ensuring that a customer has agreed to subscribe to services such as UNE-P residential services.</p> <p>A written authorization requirement would seriously delay the subscription</p> | <p>number, AT&T shall order the Referral Announcement from Verizon on behalf of the Customer. Referral Announcements shall be provided reciprocally, free of charge to either the other Party or the Customer to the extent the providing Party does not charge its own Customers for such service, for the time period required under Applicable Law, but in no event less than six (6) months after the date the Customer changes its telephone number in the case of business Customers and not less than thirty (30) days after the date the Customer changes its telephone number in the case of residential Customers. However, if either Party provides Referral Announcements for different periods than the above respective periods when its Customers change their telephone numbers, such Party shall provide the same level of service to Customers of the other Party. The periods for referral announcement may be shorter if a number shortage condition is in effect for a particular NXX code and any such shorter periods are not precluded by Applicable Law.</p> <p>18.2 Customer Contact, Coordinated Repair Calls and Misdirected Inquiries</p> <p>18.2.1 Verizon will recognize AT&T as the customer of record of all Services ordered by AT&T under this Agreement. AT&T shall be the single point of contact for AT&T</p> | |

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| | | | <p>process. WorldCom would need to allow time to prepare and send a written authorization request, then allow time for the customer to send its consent, then time to process and record receipt of written consent.</p> <p>In contrast, the use of oral third-party verification allows an order to be processed efficiently and quickly; the presence of an independent, neutral third-party ensures that the customer has indeed consented to subscribe to the service. Third-party verification would be completed in a matter of minutes.</p> <p>(See Corrected Direct Testimony of Sherry Lichtenberg, dated August 24, 2001 at 25-28).</p> | <p>Customers with regard to all services, facilities or products provided by Verizon to AT&T and other services and products which they wish to purchase from AT&T or which they have purchased from AT&T.</p> <p>Communications by AT&T</p> <p>Customers with regard to all services, facilities or products provided by Verizon to AT&T and other services and products which they wish to purchase from AT&T or which they have purchased from AT&T, shall be made to AT&T, and not to Verizon. AT&T shall instruct AT&T Customers that such communications shall be directed to AT&T.</p> <p>18.2.2 Requests by AT&T</p> <p>Customers for information about or provision of products or services which they wish to purchase from AT&T, requests by AT&T Customers to change, terminate, or obtain information about, assistance in using, or repair or maintenance of, products or services which they have purchased from AT&T, and inquiries by AT&T Customers concerning AT&T's bills, charges for AT&T's products or services, and, if the AT&T Customers receive dial tone line service from AT&T, annoyance calls, shall be made by the AT&T Customers to AT&T, and not to Verizon.</p> <p>18.2.3 AT&T and Verizon will employ the following procedures for handling misdirected repair calls:</p> <p>18.2.3.1 AT&T and Verizon will</p> | |

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| | | | | <p>educate their respective Customers as to the correct telephone numbers to call in order to access their respective repair bureaus.</p> <p>18.2.3.2 To the extent Party A is identifiable as the correct provider of service to Customers that make misdirected repair calls to Party B, Party B will immediately refer the Customers to the telephone number provided by Party A, or to an information source that can provide the telephone number of Party A, in a courteous manner and at no charge. In responding to misdirected repair calls, neither Party shall make disparaging remarks about the other Party, its services, rates, or service quality.</p> <p>18.2.3.3 AT&T and Verizon will provide their respective repair contact numbers to one another on a reciprocal basis.</p> <p>18.2.4 In addition to section 18.2.3 addressing misdirected repair calls, the Party receiving other types of misdirected inquiries from the other Party's Customer shall not in any way disparage the other Party.</p> <p>18.3 Customer Authorization</p> <p>18.3.1 Without in any way limiting either Party's obligations under Subsection 27.1, each Party shall comply with Applicable Laws with regard to Customer selection of a primary Telephone Exchange Service provider. Until the Commission and/or FCC adopts regulations and/or</p> | |

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| | | | | <p>orders applicable to Customer selection of a primary Telephone Exchange Service provider, each Party shall adhere to the rules and procedures set forth in Section 64.1100 through 1190 of the FCC Rules, 47 CFR § 64.1100 through 1190, in effect on the Effective Date hereof when ordering, terminating, or otherwise changing Telephone Exchange Service on behalf of the other Party's or another carrier's Customers.</p> <p>18.3.2 In the event either Party requests that the other Party install, provide, change, or terminate a Customer's Telecommunications Service (including, but not limited to, a Customer's selection of a primary Telephone Exchange Service Provider) and (a) fails to provide documentary evidence of the Customer's primary Telephone Exchange Service Provider selection upon reasonable request, or (b) fails to obtain authorization from the Customer for such installation, provision, selection, change or termination in accordance with Applicable Law, then in addition to any other rights or remedies available to the other Party, the requesting Party shall be liable to the other Party for all charges that would be applicable to the Customer for the initial change in the Customer's Telecommunications Service and any charges for restoring the Customer's</p> | |

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| | | | | <p>Telecommunications Service to its Customer-authorized condition, including to the appropriate primary Telephone Exchange Service provider.</p> <p>18.3.3 Without in any way limiting either Party's obligations under Subsection 27.1, both Parties shall comply with Applicable Laws with regard to Customer Proprietary Network Information, including, but not limited to, 47 U.S.C. § 222. AT&T shall not access (including, but not limited to, through Verizon OSS as defined in Schedule 11), use, or disclose Customer Proprietary Network Information made available to AT&T by Verizon pursuant to this Agreement unless AT&T has obtained any Customer authorization for such access, use and/or disclosure required by Applicable Laws. By accessing, using or disclosing Customer Proprietary Network Information, AT&T represents and warrants that it has obtained authorization for such action from the applicable Customer in the manner required by Applicable Law and this Agreement. AT&T shall, upon reasonable request by Verizon, provide proof of such authorization (including a copy of any written authorization). In the event AT&T makes available an AT&T operations support system for access and use by Verizon, Verizon agrees that the same conditions that apply to AT&T in this</p> | |

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| | | | | <p>Subsection 18.3.3 for accessing, using or disclosing Customer Proprietary Network Information made available to AT&T shall apply to Verizon when accessing, using or disclosing CPNI made available to Verizon.</p> <p>18.3.4 Verizon shall have the right to monitor and/or audit AT&T's access to and use and/or disclosure of Customer Proprietary Network Information that is made available by Verizon to AT&T pursuant to this Agreement to ascertain whether AT&T is complying with the requirements of Applicable Law and this Agreement with regard to such access, use, and/or disclosure.</p> <p>Verizon may exercise this right to audit once annually upon reasonable written notice to AT&T. Verizon may also employ such assistance as it deems desirable to conduct such audits (such as an outside auditor) so long as the party providing assistance agrees to be bound by a confidentiality agreement containing terms substantially similar to the terms in Section 28.5 of this Agreement. To the extent permitted by Applicable Law, the foregoing rights shall include, but not be limited to, the right to electronically monitor AT&T's access to and use of Customer Proprietary Network Information that is made available by Verizon to AT&T pursuant to this Agreement. The results of any audit and/or monitoring of AT&T's access</p> | |

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| | | | | to and/or use of CPNI pursuant to this Section 18.3.4 shall be subject to the confidentiality provisions (Section 28.5) of this Agreement and shall not be used by Verizon for any marketing purposes, except as permitted by Applicable Law. 18.3.5 At such time that AT&T provides access to AT&T Customer Proprietary Network Information, AT&T shall have the right to monitor and/or audit Verizon's access to and use and/or disclosure of AT&T's Customer Proprietary Network Information, on the same terms as provided in Section 18.3.4 above. | |
| IV-111 | Should the Interconnection Agreement contain a provision that requires Verizon to provide notices of network changes in compliance with Section 251(c)(5) of the Act and the FCC's implementing regulations? | Resolved by inclusion of WorldCom's Part A, Section 24.1 | | | Resolved. |
| IV-112 | Should the Interconnection Agreement contain a provision that obligates the Parties to submit promptly the Interconnection Agreement to the Commission and all other governmental entities from which regulatory approval is needed, and that obligates the Parties to negotiate promptly and in good faith such revisions as may reasonably be required to achieve regulatory approval? | Resolved by inclusion of WorldCom's Part A, Section 25.1. | | | Resolved. |
| IV-113 | Should the Interconnection Agreement contain a provision obligating the Parties to negotiate | Part A, Section 25.2. 25.2 In the event the FCC or the | This provision is necessary because a good faith negotiation requirement in the event of subsequent legal | Revised version of the WorldCom-proposed §§ 25.2 and 25.8 | In response to Issue IV-113, Verizon can agree to the language proposed by WorldCom, if it is modified to preserve |

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| | promptly and in good faith to amend the Interconnection Agreement in the event that subsequent changes in the law render any provision of the Interconnection Agreement unlawful, or materially alters the obligation(s) to provide services, or the services themselves, embodied in the Interconnection Agreement? | Commission promulgates rules or regulations, or issues orders, or a court of competent jurisdiction issues orders, which make unlawful any provision of this Agreement, or which materially alter the obligation(s) to provide services or the services themselves embodied in this Agreement, then the Parties shall negotiate promptly and in good faith in order to amend the Agreement to substitute contract provisions which conform to such rules, regulations or orders. In the event the Parties cannot agree on an amendment within thirty (30) days after the date any such rules, regulations or orders become effective, then the Parties shall resolve their dispute under the applicable procedures set forth in Section [13] (Dispute Resolution Procedures) hereof. | <p>developments will assist the Parties in giving effect to their original intentions in the face of changing legal requirements.</p> <p>Verizon's position – that it should be able to cease providing a service based on its own individual assessment of a purported change in law – undermines the very purpose of the Agreement. As these proceedings demonstrate, the parties often disagree on the interpretation of law. Verizon, under its proposal, could unilaterally interpret a change in law in a way that erroneously and adversely affect WorldCom customers and leaves WorldCom with little recourse.</p> <p>WorldCom does not seek to deny Verizon the benefits of any changes in law. If a change in law clearly allows Verizon to, for example, terminate a particular service, WorldCom will abide by the clear new law. In the event that the rights and responsibilities resulting from a change in law are uncertain, however, Verizon should not be able to unilaterally alter the obligations. Negotiation is the only reasonable and fair way to resolve the dispute. (See Rebuttal Testimony of John Trofimuk, Matt Harthun and Lisa Roscoe, dated September 5, 2001 at 27-29).</p> | <p>25.2 Subject to the terms of Section 25.8, in the event the Commission or the Virginia Commission promulgates rules or regulations, or issues orders, or a court of competent jurisdiction issues orders, which make unlawful any provision of this Agreement, or which materially alter the obligation(s) to provide services or the services themselves embodied in this Agreement, then the Parties shall negotiate promptly and in good faith in order to amend the Agreement to substitute contract provisions which conform to such rules, regulations or orders. In the event the Parties cannot agree on an amendment within thirty (30) days after the date any such rules, regulations or orders become effective, then the Parties shall resolve their dispute under the applicable procedures set forth in Section [13] (Dispute Resolution Procedures) hereof.</p> <p>***</p> <p>25.8 Notwithstanding anything herein to the contrary, if, as a result of any decision, order or determination of any judicial or regulatory authority with jurisdiction over the subject matter hereof, it is determined that Verizon is not required to furnish any service, facility or arrangement, or to provide any benefit required to be furnished or provided to WorldCom hereunder, then, unless otherwise agreed to in writing by the Parties, Verizon may discontinue the</p> | <p>Verizon's right to cease providing a service or benefit once it is no longer required to do so under applicable law.</p> <p>Under WorldCom's proposal, until WorldCom agrees to the interpretation of what may well be an obvious order by the Commission or a court, it could continue to insist that the law had not changed. That is a grossly unfair and unworkable arrangement. Indeed, at the outset of this proceeding, the Arbitrator recognized that the Parties are bound by a court's decision unless and until it is changed. In the absence of a stay, Verizon VA must be able to react to any change in law by a date certain. It cannot operate in limbo for some indefinite period of time.</p> <p><u>See</u> Direct Testimony of General Terms and Conditions Panel, dated August 17, 2001, at pp. 30-31; and Rebuttal Testimony of General Terms and Conditions Panel, dated September 5, 2001, at pp. 21-22.</p> |

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| | | | | provision of any such service, facility, arrangement or benefit to the extent permitted by any such decision, order or determination by providing thirty (30) days prior written notice to WorldCom unless a different notice period or different conditions are specified in this Agreement (including, but not limited to, in an applicable Tariff or Applicable Law) for termination of such service, in which event such specified period and/or conditions shall apply. | |
| IV-114 | Should the Interconnection Agreement contain a provision stating the Parties' intention that any services requested by either Party relating to the subject matter of the Interconnection Agreement that is not offered under the Interconnection Agreement will be incorporated into the Interconnection Agreement by amendment upon agreement by the Parties? | Resolved by inclusion of WorldCom's Part A, Section 25.3. | | | Resolved. |
| IV-115 | Should the Interconnection Agreement contain a provision requiring the Parties, when they submit the Interconnection Agreement to the Commission for approval, to request that the Commission approve the Interconnection Agreement and refrain from taking any action to change, suspend, or otherwise delay implementation? Should the provision also make each Party responsible for obtaining and keeping in effect all regulatory approvals that | Resolved by inclusion of WorldCom's Part A, Section 25.4 and 25.5. | | | Resolved. |

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| | may be required in connection with the performance of its respective obligations under the Interconnection Agreement? | | | | |
| IV-116 | Should the Interconnection Agreement contain a provision reserving the Parties' rights to legally challenge through the Section 252 appeal process any term or condition of the Interconnection Agreement established by order of the FCC or Commission? | Resolved per mediation session of 8/2/01 by inclusion of modified WorldCom-proposed Part A, Section 25.6. | | | Resolved. |
| IV-117 | Should the Interconnection Agreement contain a provision that, except as otherwise expressly stated, places on each Party the legal responsibility and expense for obtaining all rights and privileges necessary for the Party to provide its services pursuant to the Interconnection Agreement? | Resolved by inclusion of WorldCom's Part A, Section 25.7. | | | Resolved. |
| IV-118 | Should the Interconnection Agreement contain a provision making clear that each Party is an independent contractor with full control of and supervision over its own performance of obligations and its employment practices; that the Interconnection Agreement does not create any other legal relationship between the Parties, such as an agency or partnership relationship; and that the legal relationship formed is non-exclusive, preserving the right of each Party to provide services to, or purchase services from, other parties? | Resolved by inclusion of WorldCom's Part A, Section 26 et seq. | | | Resolved. |

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| IV-119 | Should the Interconnection Agreement contain a provision governing available remedies and that authorizes a Party to sue in equity for specific performance? | Resolved per email from Chris Antoniou of 8/14/01. | | | Resolved. |
| IV-120 | Should the Interconnection Agreement contain a provision governing available remedies stating that the remedies specified in the Interconnection Agreement are cumulative and are not intended to be exclusive of other remedies available to the injured Party at law or equity? Should the provision also state the Parties' agreement that the self-executing remedies for performance standards failures are not inconsistent with any other available remedy and are intended, as a financial incentive to meet performance standards, to stand separate from other available remedies? | 27.2 Unless otherwise specifically provided under this Agreement, all remedies prescribed in this Agreement, or otherwise available, are cumulative and are not intended to be exclusive of other remedies to which the injured Party may be entitled at law or equity. The Parties acknowledge that the self executing remedies for performance standards failures set forth in and incorporated into this Agreement are not inconsistent with any other available remedy and are intended only to provide Verizon with a financial incentive to meet performance standards. However, the Parties agree that, while Verizon's responsibility to pay these self-executing remedies is independent of any other damages under this Agreement they may be used to mitigate any such damages to the extent that they have been paid directly to MCI and arise out of the same breach of this Agreement. | <p>This provision is necessary because it reflects the Parties' understanding that the express remedies contained in the agreement are not intended to preclude the Parties from seeking remedies otherwise available at law or in equity.</p> <p>In mediation on this issue, Verizon raised a concern with respect to the third sentence of WorldCom's proposed language, claiming that it would allow WorldCom to recover full compensatory damages as well as full self-executing remedies under a performance plan. As a result of the mediation talks, WorldCom modified its proposed language to address Verizon's concern about double recovery. The modified third sentence provides that, in the event WorldCom (MCI) actually receives payment under a performance plan and is also entitled to damages for the same breach, the payment under the performance plan should be used to offset other damages received by WorldCom for the same Verizon breach</p> <p>Verizon has agreed to the inclusion of the first sentence of WorldCom's proposed language. Verizon appears</p> | <p>31. Performance Standards</p> <p>31.1 Verizon shall provide Services under this Agreement in accordance with the performance standards required by Applicable Law, including, but not limited to, Section 251(c) of the Act and 47 CFR §§ 51.305(a)(3), 51.311(a) and (b) and 51.603(b).</p> <p>31.2 To the extent required by Appendix D, Section V, "Carrier-to-Carrier Performance Plan (Including Performance Measurements)," and Appendix D, Attachment A, "Carrier-to-Carrier Performance Assurance Plan," of the Merger Order, Verizon shall provide performance measurement results to **CLEC.</p> <p>31.3 **CLEC shall provide Services under this Agreement in accordance with the performance standards required by Applicable Law.</p> | <p>Performance standards cannot be used to give WorldCom a double recovery for a loss resulting from a service deficiency. Because the Parties have not agreed upon a performance section, Verizon does not know if any interconnection agreement performance plan that may be adopted will be consistent with other portions of the Agreement. Moreover, not every service deficiency that results in a payment under the performance plan will constitute a breach of the interconnection agreement. Thus, Verizon cannot agree with WorldCom's proposed § 27.2.</p> <p><u>See</u> Direct Testimony of the General Terms and Conditions Panel, dated August 17, 2001, at pp. 31-32; and Rebuttal Testimony of General Terms and Conditions Panel, dated September 5, 2001, at pp. 23-24.</p> |

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| | | | <p>to approve the inclusion of the second sentence as well – it does not contest the inclusion of language that provides that the self-executing remedies available under a performance plan are not inconsistent with any other available remedy. In fact, it expressly agrees that WorldCom could be entitled to seek remedies owed under a performance plan and other remedies as long as the first is used to offset any other relief.</p> <p>In light of the modification to the last sentence provided by WorldCom, Verizon ostensibly should be amenable to including the modified last sentence. Verizon, however, has not responded to WorldCom's offer of this modification. (See Rebuttal Testimony of Matt Harthun, dated September 5, 2001 at 1-3).</p> | | |
| IV-121 | Should the Interconnection Agreement contain a provision (1) requiring Verizon to provide services and perform under this Agreement in accordance with any performance standards, metrics, and self-executing remedies (a) set forth in the Agreement and (b) established by the FCC, the Commission, and any governmental body of competent jurisdiction; and (2) incorporating those standards, metrics and remedies by reference into the Interconnection Agreement? | <p>Part A, Section 27.3:</p> <p>27.3 Verizon shall provide services and perform under this Agreement in accordance with (i) any performance standards, metrics, and self-executing remedies established by the FCC, the Commission, and any governmental body of competent jurisdiction; and (ii) the performance standards, metrics and self-executing remedies set forth in Attachment X of this Agreement. The performance standards, metrics, and self-executing remedies established by the FCC, the Commission, and other governmental</p> | <p>The Interconnection Agreement should contain a provision that requires Verizon to perform its obligations under the Agreement in accordance with performance standards, metrics, and self-executing remedies established by the FCC, the state commission, or any governmental body of competent jurisdiction. The Agreement should incorporate those standards by reference. This will provide Verizon with the incentive to provide service at government-approved levels.</p> <p>Verizon argues that performance</p> | <p>31. Performance Standards</p> <p>31.1 Verizon shall provide Services under this Agreement in accordance with the performance standards required by Applicable Law, including, but not limited to, Section 251(c) of the Act and 47 CFR §§ 51.305(a)(3), 51.311(a) and (b) and 51.603(b).</p> <p>31.2 To the extent required by Appendix D, Section V, "Carrier-to-Carrier Performance Plan (Including Performance Measurements)," and Appendix D, Attachment A, "Carrier-</p> | <p>Verizon objects to the section proposed by WorldCom as it is presently worded. The substance of this provision is more appropriately dealt with in Verizon's proposed Section 31, in which Verizon agrees to provide service in accordance with the performance standards required by applicable law. With regard to "metrics" and "self-executing remedies" established by the FCC, the Commission, or other governmental body, these metrics and remedies will apply by operation of law and there is no need to incorporate them into the agreement to make them effective between the Parties.</p> |

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| | | body of competent jurisdiction are hereby incorporated into this Agreement. | standards should not be incorporated into the Agreement because "they operate as a matter of law." This argument is utterly unpersuasive. As WorldCom has previously pointed out, the Agreement is intended to be a comprehensive explication of the terms and conditions related to "interconnection" under Section 251 and 252 of the Act. To exclude incorporation of performance standards because "they operate as a matter of law" belies the need to include many of the provisions to which the parties have already agreed to include in the Agreement. (See Rebuttal Testimony of John Trofimuk, Matt Harthun and Lisa Roscoe, dated September 5, 2001 at 30-31). | to-Carrier Performance Assurance Plan," of the Merger Order, Verizon shall provide performance measurement results to **CLEC. 31.3 **CLEC shall provide Services under this Agreement in accordance with the performance standards required by Applicable Law. | <u>See</u> Direct Testimony of the General Terms and Conditions Panel, dated August 17, 2001, at p. 32; and Rebuttal Testimony of General Terms and Conditions Panel, dated September 5, 2001, at pp. 24-25. |
| IV-122 | Should the Interconnection Agreement contain a severability provision stating that, if any term, condition or provision of the Interconnection Agreement is held invalid or unenforceable, such invalidity or unenforceability shall not invalidate the entire Interconnection Agreement (unless such construction would be unreasonable), that the Interconnection Agreement in that event would be construed as if it did not contain the invalid or unenforceable provision or provisions, and that the rights and obligations of each Party would be construed and enforced accordingly? | Resolved by inclusion of WorldCom's Part A, Section 28.1. | | | Resolved. |

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| IV-123 | Should the Interconnection Agreement contain a provision governing subcontracting, which makes clear that a Party remains responsible for its Interconnection Agreement obligations even when it subcontracts with another entity to perform those obligations, that the subcontracting Party is solely responsible for paying its subcontractors, and that no subcontractor shall be deemed a third party beneficiary under the Interconnection Agreement? | Resolved by inclusion of WorldCom's Part A, Section 29.1. | | | Resolved. |
| IV-124 | Should the Interconnection Agreement contain a provision that authorizes a Party to fulfill its obligations under the Interconnection Agreement itself or through an Affiliate, but which states that use of an Affiliate does not affect a Party's liability or duty under the Interconnection Agreement? | Resolved by inclusion of WorldCom's Part A, Sections 29.2 and 29.3. | | | Resolved. |
| IV-125 | Should the Interconnection Agreement contain a provision that makes the agreement binding upon, and for the benefit of, the Parties and their respective successors and permitted assigns? | Resolved by inclusion of WorldCom's Part A, Section 30.1. | | | Resolved. |
| IV-126 | Should the Interconnection Agreement contain a provision governing collection and payment of taxes imposed by taxing authorities on purchase of services under the Interconnection Agreement? Specifically, should such a provision: (1) set forth conditions for collection | Resolved per email from Jeanne Conroy to Linda Holman of 8/20/01. | | | Resolved. |

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| | and remittance of taxes by the parties; (2) set forth procedures should the providing Party not submit timely bills for taxes to the purchasing Party (including a limitation that taxes be assessed or paid within one year of a transaction); (3) set forth special procedures governing resale of services that would allow the party purchasing service to be exempt from tax; (4) set forth provision requiring the purchasing Party to indemnify the providing Party for any tax due on services purchased for resale; (5) obligate each Party to reasonably cooperate with the other in the event of an audit by a taxing authority; (6) set forth a definition of effective notice or communication for tax purposes, and identify designates for receipt of such notice or communication? | | | | |
| IV-127 | Should the Interconnection Agreement contain a provision stating that the Interconnection Agreement is for the benefit of the Parties alone and that it does not create any third party beneficiaries? | Resolved by inclusion of WorldCom's Part A, Section 33.1. | | | Resolved. |
| IV-128 | Should the Interconnection Agreement contain a provision stating that a Party's failure or delay in seeking to enforce the Interconnection Agreement, or to seek any remedy under it, is not to be construed as a waiver of the Party's rights under the Interconnection Agreement? Should the provision also state that any waiver by a Party of a default by the | Resolved by inclusion of WorldCom's Part A, Sections 34.1, 34.2 and 34.3. | | | Resolved. |

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| | other Party shall not be deemed a waiver of any other default? | | | | |
| IV-129 | Should the Interconnection Agreement contain a "Part B" that provides definitions of certain capitalized terms and words used throughout the Interconnection Agreement? | Part B. | <p>This set of definitions is necessary to ensure that frequently used and specialized terms and words in the Interconnection Agreement are given standard and consistent meaning throughout, thereby avoiding the ambiguity.</p> <p>Verizon agrees that the Interconnection Agreement should include a definitions section, but has not agreed to any of the definitions proposed by WorldCom. It indicates that this issue should be resolved only after the resolution of other issues in the Agreement.</p> <p>WorldCom believes that, to the extent the parties cannot agree on definitions, the Commission should simply define the terms in a manner that complies with the decision it will issue or as the terms may be defined by the Act, the FCC rules and orders, or the industry at large. Leaving the definitions to post-arbitration negotiations would needlessly put off resolution, and delay the implementation of the Agreement.</p> <p>WorldCom agrees, as Verizon suggests, that the parties should work cooperatively to identify definitions that are not in dispute (such as, presumably, "FCC"). (See Rebuttal Testimony of Matt Harthun, dated</p> | See Verizon's Proposed Interconnection Agreement, Glossary Attachment. | <p>Verizon agrees that a definition section is appropriate in the Parties' interconnection agreement. Nevertheless, Verizon cannot agree to WorldCom's proposed definition section because many of the definitions proposed by WorldCom depend upon resolution of other issues in this arbitration.</p> <p>See Direct Testimony of the General Terms and Conditions Panel, dated August 17, 2001, at p. 33; and Rebuttal Testimony of General Terms and Conditions Panel, dated September 5, 2001, at pp. 25-26.</p> |

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| V-11 | Indemnification for Directory Listings Whether AT&T should be required to indemnify Verizon for errors in or omissions of listings information caused by Verizon's gross negligence or willful misconduct? | <p>Propose to delete the last sentence of Verizon's proposed Section 4.7 of the language set forth in Issue IV-82.</p> <p><i>Section 19.1.6 of AT&T's proposed agreement sets forth contract terms and conditions that are necessary and appropriate to provide for indemnification on directory listings errors:</i></p> <p><i>19.1.6 Verizon's liability to AT&T in the event of a Verizon error in or omission of a listing shall [not exceed the amount of charges actually paid by AT&T for such listing] be the same as Verizon's liability to its own customers for such errors in or omissions of a listing, provided, however, that Verizon agrees to release, defend, hold harmless and indemnify AT&T from and against any and all claims, losses, damages, suits, or other actions, or any liability whatsoever (hereinafter for purposes of this section "Claims"), suffered, made, instituted, or asserted by any person arising out of Verizon's listing of the listing information provided by AT&T if such Claims are the proximate result of Verizon's gross negligence or willful misconduct. In addition, AT&T agrees to take, with respect to its own Customers, all reasonable steps to ensure that its and Verizon's liability to AT&T's</i></p> | <p>September 5, 2001 at 4).</p> <p>WorldCom should not be the guarantor for Verizon's mistakes. If Verizon fails to accurately reflect and process WorldCom listings that WorldCom correctly delivered and provided to Verizon, Verizon should bear responsibility for those mistakes and inaccuracies. WorldCom has no insight or control over the processes that Verizon uses to transfer other carriers' listings to its books, and therefore WorldCom should not be responsible for mistakes made in that process.</p> <p>Each party to the Agreement should be responsible for the damage it causes while carrying out its contractual obligations. Accordingly, Verizon should indemnify WorldCom to the full extent for any third-party claims that may arise (whether by willful, grossly negligent, or negligent (in)action) from Verizon's participation in the publication or dissemination of the listing information of one of WorldCom's customers. Likewise, WorldCom should indemnify Verizon to the full extent for third-party claims that may arise (whether by willful, grossly negligent, or negligent (in)action) from WorldCom's participation in the publication or dissemination of the listing</p> | <p>4.7 Indemnification. **CLEC shall adhere to all practices, standards, and ethical requirements established by Verizon with regard to listings. By providing Verizon with Listing Information, **CLEC warrants to Verizon that **CLEC has the right to provide such Listing Information to Verizon on behalf of its Customers. **CLEC shall make commercially reasonable efforts to ensure that any business or person to be listed is authorized and has the right (a) to provide the product or service offered, and (b) to use any personal or corporate name, trade name, trademark, service mark or language used in the listing. **CLEC agrees to release, defend, hold harmless and indemnify Verizon from and against any and all claims, losses, damages, suits, or other actions, or any liability whatsoever, suffered, made, instituted, or asserted by any person arising out of Verizon's publication or dissemination of the Listing Information as provided by **CLEC hereunder.</p> <p><i>19.1.6 Verizon's liability to AT&T in the event of a Verizon error in or omission of a listing shall be the same as Verizon's liability to its own end user Customers for such errors in or</i></p> | <p>Because Verizon has no relationship with AT&T/WorldCom customers, it should not be exposed to any legal dispute arising from AT&T/WorldCom customer contracts. AT&T/WorldCom should be obligated to ensure, through its own tariffs or by other appropriate means, that AT&T/WorldCom and their customers comply with the terms of the Verizon tariff, which limits the use of Verizon services being resold by AT&T/WorldCom.</p> <p>Verizon VA is not asking the CLECs to indemnify Verizon VA where Verizon VA has made an error in providing a directory listing. Rather, Verizon VA wishes to have the CLECs provide indemnification only to the extent that Verizon VA prints the information as provided and nonetheless AT&T's or WorldCom's customer brings a claim against Verizon VA. This limited indemnification is altogether appropriate. Where Verizon VA does not make an error in providing a directory listing (i.e., it prints the information as it is provided by AT&T or WorldCom), Verizon VA should not be jeopardized by claims from the CLECs' customers on account of the CLECs' errors.</p> <p>See Direct Testimony of the General Terms and Conditions Panel, dated August 17, 2001, at pp. 33-37; and Rebuttal Testimony of General Terms</p> |

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| | | <p><i>Customers in the event of a Verizon error in or omission of a listing shall be subject to the same limitations that Verizon's liability to its own Customers are subject to.</i></p> | <p>information of one of WorldCom's customers.</p> <p>Verizon argues that each party should expressly "indemnify the other from any claims arising from contractual obligations that do not involve the other party." In other words, WorldCom or AT&T should indemnify Verizon against third party claims brought by WorldCom or AT&T's customers for <u>Verizon's</u> mistakes in publishing a directory listing.</p> <p>Verizon's position is completely meritless and must be rejected. Neither Verizon nor WorldCom should be required to cover the costs and liabilities that it cannot control. And there is no dispute that WorldCom cannot control Verizon's actions in publishing and distributing directory listings. (See Rebuttal Testimony of John Trofimuk, Matt Harthun and Lisa Roscoe, dated September 5, 2001 at 17-19).</p> <p><i>AT&T should not be required to indemnify Verizon for errors in or omissions of listings information caused by Verizon's gross negligence or willful misconduct. In those instances, Verizon should be liable for any damages. AT&T asks only that Verizon accept liability for its own willful misconduct or gross</i></p> | <p><i>omissions of listings. In addition, AT&T agrees to take, with respect to its own Customers, all reasonable steps to ensure that its and Verizon's liability to AT&T's Customers in the event of a Verizon error in or omission of a listing shall be subject to the same limitations that Verizon's liability to its own Customers are subject to.</i></p> <p><i>19.1.7 AT&T will adhere to all practices, standards, and ethical requirements of Verizon with regard to listings, and, by providing Verizon with listing information, warrants to Verizon that AT&T has the right to place such listings on behalf of its Customers. Verizon will provide AT&T, upon request, a copy of the Verizon listings standards and specifications manual. AT&T agrees to release, defend, hold harmless and indemnify Verizon from and against any and all claims, losses, damages, suits, or other actions, or any liability whatsoever, suffered, made, instituted, or asserted by any person arising out of Verizon's listing of the listing information provided by AT&T hereunder, except for any actions arising from Verizon's willful misconduct</i></p> | <p>and Conditions Panel, dated September 5, 2001, at pp. 20-21.</p> |

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